

REMARKS

Applicants have amended their specification to show an express claim of priority as a divisional application of the parent application Serial No. 10/149,353, now U.S. Patent 6,624,183, and corrects the statutory provision under which the parent application was filed. Note also Paragraph 18 of the Utility Patent Application Transmittal form submitted with the present application and the Transmittal Letter for the parent application.

Rejection under 35 U.S.C. 103

Claims 7 and 8 stand rejected under 35 U.S.C. 103(a) as being unpatentable over EP 775,696 ("Shibata et al") in view of an article by Williams et al (as cited in the Office Action). Applicants respectfully traverse.

As pointed out in the Office Action, Shibata et al discloses the compound of Applicants' formula (I) and the use of related compounds as herbicides and Williams et al discloses the compound of Applicants' formula (XX) and its use as a herbicide. Neither reference, however, discloses combining these specific compounds nor suggests any particular advantage of combinations of these compounds.

Applicants, in contrast, have found unexpectedly enhanced pesticidal activity for the combination of a compound of formula (I) and fosetyl-Al (i.e., formula (XX)), as shown in the accompanying Declaration under 37 C.F.R. 1.132 of Dr. Ulrike Wachendorff-Neumann, one of the inventors. Applicants submit that those skilled in the art would not have been led to such enhanced activity and respectfully submit that their claims are not rendered obvious by the cited references.

Double Patenting Rejection

Claims 7 and 8 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claim 1 and 3 of copending application Serial No. 10/149,353. As noted above, the present application is a divisional application of the '353 application, which has matured into U.S. Patent 6,624,183. In view of the relationship between the present application and its parent and Applicants' specific reservation of the right to file one or more divisionals of the parent (see Remarks at page 6 of the Amendment to the parent application dated January 29, 2003), Applicants respectfully submit that this double patenting rejection should be withdrawn.

In view of the preceding amendments and remarks, allowance of the claims is respectfully requested.

Respectfully submitted,

By Richard E. L. Henderson
Richard E. L. Henderson
Attorney for Applicant(s)
Reg. No. 31,619

Bayer CropScience LP
100 Bayer Road
Pittsburgh, Pennsylvania 15205-9741
PHONE: (412) 777-3809
FACSIMILE PHONE NUMBER:
412-777-3902
s/rmc/reih/0506